HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3637 of 2007

Dated:16.04.2007

Between:

Darshini Handicapped Welfare Society.

…Petitioner

and

District Collector, Krishna District and others.

…Respondents

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3637 of 2007

ORDER:

This Writ Petition is filed against a notice issued under Section 7 of the Andhra Pradesh Land Encroachment Act, 1905 (for short, 'the Act') and the consequential notice/order under Section 6 of the Act issued by the second respondent directing to remove the encroachment in an extent of 80 square yards in survey No.797/6 situated at Kasturibaipet, Vijayawada.

Smt.Venkata Narasamma was given house site admeasuring 112 square yards in Kasturibaipeta, as her husband was a freedom fighter. Smt.N.Padmavathi is their daughter. She started Dharshini Handicapped Welfare Society, and her mother permitted her to run the home in the ground floor. At present, statedly there are 40 handicapped children taking shelter in the welfare home started by Padmavathi, which is also partly funded by Government grants. It appears, the petitioner-society is in possession of 80 square yards of land owned by the Government in survey No.797/6 adjacent to the house bearing No.34-2-73, Kasturibaipet. When there were objections for this encroachment, the petitioner approached the District Collector requesting alienation/allotment of the land for being utilised for the purpose of handicapped welfare society. The same is still pending. It is alleged that all the revenue officials also recommended for allotment/regularisation of occupation of 80 square yards of Government land in favour of the petitioner. Be that as it is, the writ petition is filed alleging that on 20.02.2007, 15 persons came along with the Mandal Revenue Inspector (MRI) and two lady constables and demolished part of the compound wall. The petitioner then

approached the first respondent on 21.02.2007 for redressal, in vain.

Initially, the Writ Petition is filed seeking a writ of *mandamus* declaring the action of the respondents in not regularising 80 square yards of land, as illegal and arbitrary, and for consequential direction to the respondents to re-erect the demolished structures. Subsequently, by filing W.P.M.P.No.9151 of 2007, the petitioner has amended the prayer of the Writ Petition and a reference of which, is made in the beginning of this order.

The Mandal Revenue Officer (MRO), second respondent herein, filed a counter-affidavit. It is stated that the land admeasuring Acs.11.00 in NTS No.796/6, Block No.18 and Revenue Ward No.9 is classified as 'Hill Poramboke'. Due to quarrying of the hillock, vacant land originated, which was utilised by the Government by constructing a building for running hostel to girls relating to Scheduled Caste. In between the hostel and the backyard of the petitioner's building, there is a vacant land in an extent of Ac.0.15 cents, which is proposed to be utilised for the students of the said hostel. During inspection by the Revenue Inspector on 25.01.2007, it was found that the petitioner occupied an extent of 80 square yards of land and constructed a hallow brick wall overnight on 24.01.2007. The petitioner also constructed a shed with tin sheets. On receipt of the report, the second respondent issued a notice, dated 27.01.2007, under Section 7 of the Act calling upon the petitioner to vacate the encroachment. As the petitioner failed to comply with the notice, the MRO passed orders on 12.02.2007 under Section 6 of the Act directing eviction of the petitioner. The petitioner filed the Writ Petition and obtained orders of *status quo*.

The petitioner filed a reply-affidavit denying various averments in the counter-affidavit and also denied the receipt of notice under Section 7 of the Act or receipt of the order under section 6 of the Act. Therefore, on 02.04.2007, this Court directed the learned Assistant Government Pleader for Revenue (General-A) to produce the records.

The file bearing No.Rc.A/117/07 from the office of the MRO is produced before this Court. A perusal of the same would reveal the following. The MRI submitted a report on 25.01.2007 alleging that the petitioner encroached upon the Government land admeasuring 80 square yards overnight and constructed hallow brick wall and also raised a tin roofed shed. On the said report, the MRO endorsed ordering issue of notice under Section 7 of the Act. A notice was prepared on 27.01.2007 - presumably by the MRI, who put up the report on 25.01.2007. It was signed on 27.01.2007. Curiously at 10.00 A.M., on the same day, the MRI endorsed stating that as the petitioner refused to receive the notice, the same was displayed on a wooden

pole at 10.00 A.M. The same was done in the presence of three residents of the locality. The same MRI had also prepared order/notice under Section 6 of the Act on 12.02.2007, and again the same was displayed to a wooden pole on the same day at 11.00 A.M. Though issue of notice under Section 7 of the Act was supported by the orders passed by the MRO, in the left hand margin of the report of the MRI, the issuance of notice under Section 6 of the Act is not supported by any note orders.

The learned Assistant Government Pleader strenuously contends that the MRO, being Mandal Executive Magistrate, is entitled to sign the orders at any time and at any place, and therefore, it is presumed that notice under Section 7 of the Act was signed by the MRO much prior to 10.00 A.M., when MRI went to the site and affixed the notice to a wooden pole.

This Court has carefully perused the report of the MRI and the notices under Sections 7 and 6 of the Act. In the counter-affidavit, the MRO nowhere even whispered that he signed the notice under Section 7 of the Act before 10.00 A.M. and handed over to MRI, nor there is an affidavit filed by MRI before this Court to that effect. This creates a doubt as to whether the principle of fairness was scrupulously followed in this case. When on a question of fairness any doubt arises, the benefit of the same should necessarily go to the citizen. Therefore, this Court is inclined to agree with the learned counsel for the petitioner. The notice under Section 7 of the Act was not issued to the petitioner either personally or by substituted service. For this reason, the impugned action of the second respondent cannot be sustained.

In the result, for the above reasons, the notices under Sections 7 and 6 of the Act issued by the second respondent are set aside. It shall, however, be open to the second respondent to take necessary action against the encroacher by following due process of law.

The Writ Petition is, accordingly, allowed. No costs.

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(V.V.S.RAO, J)

16.04.2007
GJ